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समक्ष माननीय उच्च न्यायालय म0प्र0 जबलपुर

क्र. प्र. क्र. CA. 726/98 ~~163/98~~

Division Bench (Criminal)

दा. अ. क्र. .....

सोहन आत्मज वाहल आयु 22 वर्ष,
पेशा खेती निवासी ग्राम तुलेनापानी
छोटे-डोगर जिला - बस्तर म0प्र0

अपीलार्थी / अभियुक्त

वि रु द्ध

म0प्र0 शासन द्वारा आरक्षी केन्द्र,
छोटे-डोगर जिला - बस्तर म0प्र0

उत्तरार्थी /अभियोग

धारा 302 भारतीय दंड विधान -
सजा- आजीवन कारावास.

अभियुक्त / अपीलार्थी जेल में.

अपील अन्तर्गत 374 (2) उच्च प्रक्रिया संहिता 1973.

(26)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

(DIVISION BENCH)

Criminal Appeal No.726 of 2000

Sohan

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge
29-6-2005

HON'BLE MR. JUSTICE DILIP R. DESHMUKH

I

Sd/-
Dilip Raosaheb Deshmukh
Judge

POST FOR JUDGMENT ON 1st July, 2005

Sd/-
30-6-2005

(29)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.726 of 2000

Sohan

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Present: -

Mrs. Kiran Jain, Advocate: For the appellant.

Mr. Sachin Singh Rajput & Mr. Akhil Mishra, Panel Lawyers: For the State/respondent.

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND

HON'BLE MR. DILIP R. DESHMUKH, JJ.

J U D G M E N T

(Delivered on 1st July 2005)

The following judgment of the Court was delivered by *L.C. Bhadoo, J.*-

1. At the time of arguments on M.(Cri.)P.No.3131/2004, application for suspension of sentence imposed on the appellant and grant of bail, learned counsel for the parties submitted that the appeal itself may be decided as the accused/appellant is in custody since 1998. Accordingly, it was decided to dispose of the appeal itself.

2. The accused/appellant has preferred this criminal appeal under Section 374 (2) of the Code of Criminal Procedure, being aggrieved by the judgment of conviction and sentence dated 11th January, 2000, passed by the Sessions Judge, Jagdalpur, in Sessions Trial No.189/98, whereby, the learned Sessions Judge after holding the accused/appellant guilty for the murder of Sushila, convicted him for the commission of offence under Section 302 of the I.P.C. and sentenced him to undergo imprisonment for life.

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3. The prosecution case in brief necessary for the disposal of this criminal appeal is that Sushila, a widow of Mahru, had conceived on account of her physical relations with the accused/appellant. A meeting of Gram Panchayat Sulenga was convened in which deceased Sushila informed the Panchayat that she has conceived due to her physical relations with the accused/appellant. The accused/appellant on enquiry by the Panchayat also admitted this fact. On this, the Panchayat asked the accused/appellant to keep Sushila with him, which was not liked by the accused/ appellant, and on the very next day Sushila was found dead near Madin river. In the morning of 2-3-1998 Manki Bai (PW-1), resident of Umargaon, went to the river for taking bath, on reaching the river she saw that a dead body of an unknown female was lying on the bank of river, therefore, she returned to her house and informed to her father Kahru. On receiving this information, Kahru and other villagers went to the scene of occurrence from where after seeing the dead body of Sushila, Manki Bai along with others went to Police Station Chotedongar, and gave merg intimation Ex.P-7, based on that, F.I.R. Ex.P-9 was registered.

4. After registration of the case, Assistant Sub-Inspector S.N. Sharma left for the scene of occurrence, inspected the dead body, and enquiries were made from the villagers. After giving notice to the witnesses, he prepared Panchanama of the body under Ex.P-1. For conducting post-mortem requisition Ex.P-8 was sent. Blood stained soil and simple soil were taken into possession by him and also he took into possession from the scene of occurrence, the knife (weapon of offence) under Ex.P-2. Site plan of the scene of occurrence was also prepared. Post-mortem was conducted by Dr. Prabhakar Chhote (PW-7) and Dr. M.L. Chaudhary, Assistant Surgeon, on the scene of occurrence itself on 3-3-1998. Post-mortem report Ex.P-10 was prepared and they noticed two injuries on the neck of the deceased. Trachea of the deceased was found cut by a sharp object. On opening the body it was found that trachea, carotid artery and internal jugular vein were found cut. The doctors were of the opinion that the injuries were sufficient

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in the ordinary course of nature to cause death. Sushila died on account of heart failure due to excessive haemorrhage. They were of the opinion that death was homicidal in nature.

5. PW-5 Hemant Kumar Shrivastava, Station House Officer, Police Station: Chotedongar took up the investigation, inspected the scene of occurrence and took into possession one button of the shirt under Ex.P-4. Thereafter, he also took into possession the terricot shirt of the accused from him under Ex.P-5. The seized articles were sent for chemical analysis. As per the report of the chemical examiner, blood was found on the soil collected from the scene of occurrence and also on the shirt of the accused, sari & blouse of the deceased. The FSL, Raipur also gave report to the effect that the button, which was sent for examination, was found to be of the shirt of the accused.

6. After completion of investigation, charge sheet was filed against the accused for the commission of offence under Section 302 of the I.P.C. before the Court of Judicial Magistrate, First Class, Narainpur, who in turn, committed the case to the Sessions Judge, Jagdalpur.

7. The prosecution in order to prove charge against the accused/ appellant examined as many as seven witnesses. The learned Sessions Judge recorded the statement of the accused under Section 313 of the Cr.P.C. in which the accused denied the prosecution evidence and stated that the witnesses are false, no Panchayat was convened, he is innocent, and he has been falsely implicated in the crime.

8. The learned Sessions Judge after hearing the arguments of the Public Prosecutor and counsel for the accused, and after perusal of the evidence and record reached to the conclusion that the accused was the author of the crime, therefore, he convicted him in the manner mentioned in the previous part of this judgment.

9. We have heard Mrs. Kiran Jain, learned counsel for the appellant and Mr. Sachin Singh Rajput & Mr. Akhil Mishra, Panel Lawyers on behalf of the State/respondent.

10. As far as the question of nature of death of the deceased being homicidal is concerned, learned counsel for the appellant did not dispute the same. PW-7 Dr. Prabhakar Chhote has stated that on 3-3-1998 he conducted the post-mortem on the body of Sushila and noticed two injuries on the neck caused by a sharp edged weapon, which were sufficient in the ordinary course of nature to cause death. On dissection it was found that trachea, carotid artery and internal jugular vein were cut, and Sushila died on account of haemorrhage and excessive bleeding. Apart from that as per the evidence of PW-1 Manki Bai & PW-6 S.N. Sharma body of Sushila was lying on the bank of river Madin in an injured condition. Therefore, in view of the above evidence, it stands proved that the nature of death of Sushila was homicidal.

11. Now, coming to the question of involvement of the accused in committing the murder of Sushila, in this case, there is no direct and ocular evidence. The whole case rests on the circumstantial evidence. In order to fasten the liability on the accused for the commission of crime in a case based on circumstantial evidence only, the prosecution is required to prove the offence as per the settled principles of law laid down by the Apex Court in the matter of **Nesar Ahmed vs. State of Bihar** reported in **AIR 2001 SC 2416** i.e. in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

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12. In this case, the prosecution tried to establish the crime against the accused on the following circumstances: -

    a. that, the accused made extra judicial confession before PWs 2, 3 & 4;

    b. that, the accused admitted before the Panchayat that Sushila widow had conceived due to her physical relations with him, and the Panchayat asked the accused to keep Sushila, who was a widow, with him, which was not liked by the accused/appellant;

    c. that, the button of the shirt of the accused was found on the scene of occurrence which tallied with other buttons of the shirt of the accused, which was taken into possession under Ex.P-5; &

    d. that, blood was found on the shirt of the accused.

13. As far as the circumstance (a) is concerned, we have carefully scrutinized the evidence of PW-2 Motiram, PW-3 Bajauram & PW-4 Lachhuram. Having scrutinized the evidence and gone through the judgment of the trial Court, we are of the considered opinion that the trial Court has rightly discarded the evidence of these witnesses that the accused/appellant made voluntary extra judicial confession regarding committing the murder of Sushila by him, as the above extra judicial confession is said to have been made in presence of the Police and on enquiry of the Police which is evident from the evidence of PW-2 Motiram. Therefore, the extra judicial confession was not admissible in evidence in view of the bar created by Sections 25 & 26 of the Evidence Act. In the circumstances, the prosecution has failed to establish this circumstance of extra judicial confession made by the accused.

14. As far as the circumstance (b) is concerned, learned counsel for the appellant argued that the evidence of prosecution witnesses does not inspire confidence and there are contradictions in the evidence of these prosecution witnesses, as such same cannot be believed.

15. On the other hand, learned Panel Lawyers for the State/respondent supported the findings of the trial Court. The trial Court has believed the

prosecution witnesses namely, PW-2 Motiram, PW-3 Bajauram & PW-4 Lachhuram, rejecting the argument advanced by counsel for the accused.

16. We have scrutinized the evidence of these three witnesses (PWs 2, 3 & 4). PW-2 Motiram, who is the brother-in-law of Sushila, has categorically stated that Sushila was the widow of Mahru. As she became pregnant, Panchayat was convened in the village, in that Panchayat Lachhu, Laila, Bajau and other villagers were also present, the accused also came in that Panchayat, and on enquiry from Sushila she disclosed before Panchayat that she is pregnant by five months due to her physical relations with the accused. On this, the Panchayat enquired from the accused/appellant, he also admitted this fact before the Panchayat. Therefore, the Panchayat asked the accused/ appellant to keep Sushila with him. In cross-examination, this witness has stated that the Panchayat was convened only once, no Panchayat was convened after the death of Sushila. Similar is the evidence of PW-3 Bajauram who has corroborated the evidence of PW-2. PW-3 has stated that Sushila was not seen from the next day of Panchayat and later on, he came to know that Sushila has been murdered. He has also corroborated the evidence of PW-2 Motiram regarding convening of Panchayat meeting and admission by the accused that Sushila conceived due to her physical relations with him. The accused was arrested by the Police and he confessed before the villagers. Similar is the evidence of PW-4 Lachhuram. PW-4 has also proved the fact of conceiving child by Sushila due to her physical relations with the accused. This fact was admitted by the accused, therefore, the Panchayat handed over Sushila to the accused. This witness has also stated that second time before the Panchayat the accused made a confession that Sushila wanted to reside with him which was not acceptable to him, therefore, he murdered Sushila with knife. In cross-examination, this witness has stated that in the village, Panchayat was convened once, second time, next day, Panchayat was at the spot and in that Panchayat he alone went to the scene of occurrence. From the evidence, it appears that this witness (PW-4) referred to the second Panchayat, when people

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collected on the site of occurrence and in that the accused admitted before the Police regarding the commission of crime.

17. We do not find any material contradiction in the evidence of these witnesses as has been argued by learned counsel for the appellant that there is a contradiction in the evidence of these witnesses about the place of Panchayat. If we carefully examine the evidence of these three witnesses, there is no contradiction, rather in the unanimous evidence they have stated that one day before when the dead body of Sushila was found, Panchayat was convened in the village and the village Panchayat asked the accused to keep Sushila with him. The next Panchayat which PW-4 refers is at the scene of occurrence, about that he has stated that he alone was present in the village at that place, PW-2 & PW-3 were not present and that people collected at the scene of occurrence, to that occasion, the witness is referring as Panchayat. As such, we do not find any contradiction. Counsel for the accused was not able to elicit in cross-examination of these witnesses any circumstance which discredits their evidence regarding convening of Panchayat meeting and admission by the accused that Sushila was conceived by him and that the Panchayat asked him to keep Sushila with him.

18. From the evidence of these three witnesses it is amply proved that widow Sushila had conceived on account of her physical relations with the accused, and this fact was admitted by both Sushila and accused before the Panchayat, then the Panchayat asked the accused to keep Sushila with him, which he never wanted because Sushila was a widow, much elder in age in comparison to the accused, and that made him to finish Sushila. On the very next day of the Panchayat in which the accused was asked to keep Sushila with him, dead body of Sushila was found on the bank of river Madin.

19. When the prosecution case is entirely based on circumstantial evidence, then it is the duty of the prosecution and the Court to ascertain as to what was the immediate impelling motive on the part of the accused, which led him to

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commit the crime in question. As in the present case, the accused/appellant did not want to keep Sushila with him as per the decision of Panchayat that is why there was a strong motive in the mind of the accused for committing the murder of Sushila. Therefore, we are of the considered opinion that the trial Court has rightly held that this circumstance (b) stands established by the prosecution evidence against the accused.

20. Now, coming to the question of recovery of button of the shirt of the accused from the scene of occurrence, recovery witnesses have not been produced, but PW-5 Hemant Kumar Shrivastava, S.H.O., PS: Chotedongar, has stated that from the year 1997 he was posted as SHO, PS: Chotedongar, under Ex.P-4 he took into possession sky colour button of the shirt from the scene of occurrence and sky colour shirt was also taken into possession from the body of the accused/appellant on the same day under Ex.P-5. Button and shirt were sent for chemical examination to the Forensic Science Laboratory, Raipur under Ex.P-6. In further evidence, he has stated that shirt Article 'B' was taken into possession after getting it removed from the body of the accused and he noticed that from the upper portion of the shirt, button was missing and it was also noticed that fiber of the place of upper button was stretched. It was further noticed that middle portion of the button was found missing due to pulling of shirt. Report of the FSL also mentions that button Article 'E' which was found on the place of occurrence was similar in colour, make and size of other two buttons (S-1 & S-2) of the shirt, Article 'D'.

21. Learned counsel for the appellant argued that in the seizure memo it has been mentioned that the upper button was missing, whereas in the FSL report it has been mentioned 2nd and 3rd buttons were also missing which has not been mentioned in the seizure memo, therefore, it creates doubt.

22. But, we do not find any substance in this argument. It has been discussed by the trial Court at length. We are also of the opinion that the trial Court has rightly rejected the argument of counsel for the accused. In fact,

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there is no contradiction, because, in the seizure memo as per the evidence of PW-5, he mentioned about missing of upper button as there were signs of pulling of the shirt at the place of upper button, as fiber of the shirt of that place was stretched, and since the I.O. was satisfied that the button in question, which was recovered from the scene of occurrence tallies with the place of upper button from where the upper button was missing, therefore, he mentioned about that fact only.

23. Now, coming to the question raised by learned counsel for the accused/ appellant that in the seizure memo colour of the shirt has been mentioned as blue, whereas, in the FSL report colour of the shirt has been mentioned as green, therefore, it is a contradiction, it is true that this discrepancy is there, but on this count, recovery of shirt from the body of accused and button from the place of occurrence cannot be disbelieved as PW-5 Hemant Kumar Shrivastava has categorically stated that the shirt Article 'B' which was produced in the Court and exhibited was taken into possession from the body of the accused. This point about the colour was not raised before the trial Court. Therefore, at this stage, when the shirt was produced before the Court and no question was raised about colour of the shirt, as has been mentioned in the judgment of the trial Court that counsel for the accused did not request that in order to ascertain whether the shirt is of the accused or not, the accused may be asked to wear the shirt in the Court, and after discussing the evidence and arguments, the trial Court reached to the conclusion on the basis of report of the FSL, that the button which was recovered from the place of occurrence and other buttons of the shirt of the accused which was taken into possession by PW-5 under Ex.P-5, were tallying, we do not find any reason to differ from the finding of the trial Court. In the circumstances, the finding of the trial Court that the buttons of the shirt of the accused and the button, which was found on the place of occurrence, were similar is based on the legal evidence available on record and that has been critically examined as per the argument advanced by

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learned counsel for the appellant. Therefore, the Court below has rightly held that this circumstance stands established against the accused.

24. Now, coming to the point that blood was found on the shirt of the accused, it is true that Serologist's report is not there to show that human blood was present on the shirt and that too of the blood group of the deceased, but as has been held by the Apex Court in the matter of **Gura Singh vs. State of Rajasthan** reported in **(2001) 2 SCC 205**,

> "Failure of Serologist to detect origin of blood - With the lapse of time classification of the blood could not be determined - In the circumstances held, accused cannot claim any benefit on the strength of a belated and stale argument that in absence of report regarding the origin of the blood, accused cannot be convicted."

It is true that if through Serologist's report the prosecution can establish the fact that blood found on the articles of the accused and the blood group of the deceased are same, then it is a strong circumstance against the accused, but where other circumstantial evidence establishes connection of the accused with the crime and further evidence is on record that blood was found on the shirt of the accused, even though there is no origin of blood in the report, even then, looking to the facts and circumstances of the case, finding of blood on the shirt of the accused can also be taken as a circumstance coupled with other circumstantial evidence to support that other circumstantial evidence. Independently, this circumstance may not be able to prove connection of the accused with the crime.

25. No other point was argued by learned counsel for the accused/ appellant.

26. In the circumstances, for the foregoing discussion, we are of the considered opinion that the trial Court has rightly held that widow Sushila conceived on account of her physical relations with the accused and the Panchayat asked the accused to keep Sushila with him, which was not liked by the accused, and on the very same day he took Sushila towards river Madin and finished her with a knife. Therefore, this circumstance coupled with recovery of button of the shirt of the accused/appellant from the place of occurrence

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as also presence of blood on the shirt of the accused completes the chain of circumstances which unerringly points that the accused alone was the perpetrator of the crime, and establishes involvement of the accused in the committing the murder of Sushila beyond any reasonable doubt. Hence, the Court below has, on circumstantial evidence, rightly held the accused/appellant guilty for committing the murder of Sushila. As such, we do not find any ground to interfere with the finding the trial Court.

27. In the result, we do not find any merit in this appeal, therefore, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Soma